

### **OPTION 13 REDEVELOPMENT AGREEMENT**

THIS AGREEMENT is entered into between the CITY OF LINCOLN, NEBRASKA, a municipal corporation in the State of Nebraska (City), and R STREET LOFTS LLC, 1941 K STREET, LINCOLN NE 68510, a Nebraska Limited Liability Company. (Lofts).

#### **Recitals:**

**Redevelopment Plan.** The City has undertaken a program for the redevelopment of blighted and substandard areas in the City of Lincoln, Nebraska. As part of that program the City has prepared and approved the Lincoln Center Redevelopment Plan (Redevelopment Plan), a copy of which, together with amendments thereto, is on file in the Office of the City Clerk (City Clerk).

**Redeveloper's Property.** Lofts is the owner of real estate as shown on Attachment A generally known as 727 R Street and the adjacent former railroad right of way more particularly described as ORIGINAL PLAT BLOCK 31 LOTS 3 & 4 & E8' VAC ALLEY ADJ and ORIGINAL PLAT BLOCK 31 W14' LOT 2 all in Lincoln, Lancaster County, Nebraska (Lofts Property) which the City will acquire from Lofts and transfer back to Lofts for redevelopment at fair value consistent with and for purposes of redevelopment according to the Redevelopment Plan.

**Option 13 Site.** City intends to acquire the land and buildings on the Lofts Property pursuant to the settlement requirements of the net exchange of land for assembling the Option 13 Site between the parties as set forth in paragraph 16 (a).

**Private Redevelopment.** Lofts will redevelop the site to create a private development including new construction and improvements for residential use, including parking and related uses as provided in this Agreement.

In consideration of the duties and obligations undertaken, the mutual benefits herein, and in furtherance of the Redevelopment Plan, the Parties agree as follows:

1. **Project Improvements.** The City and Lofts enter into this Agreement to implement the redevelopment of the Lofts Improvements and the Public Improvements (collectively Project or Project Improvements) for the purposes and in accordance with the Redevelopment Plan.
2. **Purpose.** The City and Lofts mutually agree that the redevelopment of the Project is in the vital and best interest of the City and is in furtherance of the health, safety, and welfare of its residents, and is in accordance with the public purposes and provisions of applicable laws and requirements under which the Redevelopment Plan has been undertaken. The purpose of this Agreement is to create a private redevelopment and adaptive reuse of the real estate described on Exhibit "A" hereto (the "Redevelopment Site") for two, three to four story residential buildings consisting of 13 condominiums ranging from 1200 to 2000 sq ft. and related uses consistent with the Redevelopment Plan (the "Project").

3. Schematic Drawings of the Project. The Project Schematic Drawings have been prepared by Lofts as shown in Attachment B. Construction Drawings for the Redevelopment Project shall be approved by the City and Lofts prior to construction.

4. Construction. Lofts will use its best efforts to substantially complete construction of all 13 of the dwellings within 24 months following the Closing of the purchase and sale of Option 13 Site. The City shall complete the Public Improvements, by the time of the Closing.

5. Logistical Improvement Account; Cost Containment Provision. The City shall deposit lawfully available and appropriated funds as identified in Attachment F (Net proceeds of the land exchange less escrow and Streetscape account) into the Logistical Improvements Account as needed to comply with the terms of this agreement. Lofts shall timely submit engineer's estimates or contractor's estimates for the Logistical Improvements in advance of requesting payment for the same to enable the City to obtain an independent Cost Containment review of the same by a qualified professional or contractor. The Mayor shall approve or reject said cost estimates based on the review within 90 days of receipt of the same. The Logistical Improvements shall be so designated on the Construction Documents or Drawings as approved by the Mayor. Where reasonable and appropriate, Lofts shall utilize unit price or itemized contracts specifically showing the eligible items or quantities prior to an open letting or entering into the same. Overhead, overtime, incentive, office, mobilization, administration or similar generalized charges shall be allowed only as authorized by the Mayor in advance of incurring the same. Lofts shall submit authentic documentation to the Mayor on City approved forms or format for payment of any expenses related to the Logistical Improvements. Lofts agrees to assist and make any and all pertinent documents available for inspection and copying by the City or its auditors in support of the same. Lofts will be solely responsible for payment of any contract amounts related to all the Logistical Improvements specifically including the Logistical Improvements and shall hold the City harmless from and against any claims made by contractors or subcontractors related to the same. The City will use its best efforts to make payments or deny payments to Lofts from the Logistical Improvements Account with written explanation as provided within 10 days from the date the written request is received by the City. As part of the Project, Lofts will contract and subject to the payment provisions above for Logistical Improvements. Otherwise, payment requests from the Logistical Improvements Account shall, to the extent practicable, be administered in a process similar to commercial banking draw requests for loan proceeds, using customarily accepted forms and certificates.

6. Construction Documents; Changes in Construction Documents. The Mayor and Lofts shall be entitled to review and approve the exterior portions of the Construction Documents for the Project Improvements, and such approval shall be granted if the Construction Documents are consistent with the Schematic Drawings and the terms and conditions of this Agreement. Neither Lofts nor the City shall have unilateral authority to initiate changes to the exterior portions of the Construction Documents without the other party's approval. A party requesting a change shall submit any material changes in the Construction Documents to the other party for approval which approval shall not be unreasonably withheld. A party shall be deemed to have approved the submitted Construction Documents or proposed changes thereto unless the

requesting party receives written notice within fourteen (14) days after receipt of the proposed Construction Documents or proposed changes. The requesting party shall be obligated to pay the additional costs and fees of the Architect reasonably incurred as a result of such changes.

7. Lofts's Responsibilities. Lofts will, at its own cost and expense, purchase Option 13 Site from the City as provided in this Agreement at fair value to complete the Lofts Improvements in connection with the Project. Lofts, at its own cost and expense, shall design and construct an appropriate residential use thereof consisting of not less than read the 13 townhomes in 2 separate, 3 story buildings according to approved plans as provided in this Agreement and commence construction within 90 days after Closing. The development is intended to provide for market rate single-family dwellings, subject to economic conditions. The improvements for Option 13 Site shall be substantially completed within 24 months after closing.

8. Grant of Easements to City. At Closing, if needed, Lofts will grant to the City without additional consideration the appropriate public access and utility easements in a form acceptable to the City Attorney as they relate to proposed drive to provide access to Option 13 Site as Shown on Attachment C.

9. Omitted.

10. Architect and Landscape Designer. Lofts will use the services of Dennis Lyon as Project Architect and or another architect and landscape designer acceptable to the City.

11. Representations. Lofts represents and agrees that its undertakings, pursuant to this Agreement, have been, are, and will be, for the purpose of redevelopment of Option 13 Site and not for speculation in land holding.

12. Restrictions on Assignments of Rights or Obligations. Lofts represents and agrees that prior to completion of Lofts's Responsibilities provided for above there shall be no sale or transfer of the Option 13 Site Project or assignment of its rights or obligations under this Agreement to any party without the prior written approval of the City (which shall not be unreasonably withheld), other than mortgages, and involuntary transfers by reason of death, insolvency, or incompetence. The City shall retain the right of first refusal for any subsequent transfer or sale of all or substantially all of Lofts's interest as redeveloper in the property. Such right of first refusal shall be valid for a period of 60 days after Lofts or its successors or assigns provide written notice of a pending sale to the Mayor. The right of first refusal must be exercised by the Mayor in writing within such 60 day period upon the same terms and conditions of the pending sale as provided to and verified by the Mayor. The right of first refusal shall not apply to financing permitted under this Agreement or to the sale of individual lots or units upon written approval from the Mayor of the manner to accomplish the same in conformance with the Redevelopment Plan and this Agreement including the transfer to the new owner of the same use restrictions and necessary covenants enforceable by the City respecting the duties and obligations undertaken by Lofts hereunder, which approval shall not be unreasonably withheld. The City shall be entitled to require, as conditions to any required approval, that:

a. Any proposed transferee shall have the qualifications and financial responsibility, as determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by Lofts; and

b. Any proposed transferee, by instrument satisfactory to the City and in form recordable in the Office of the Register of Deeds, shall for itself and its successors and assigns and for the benefit of the City, have expressly assumed all of the obligations of Lofts under this Agreement; and

c. There shall be submitted to the City for review, not less than ten (10) days prior to the proposed execution thereof, all instruments and other legal documents involved in the transfer or described in this Agreement; and if disapproved by the City, its disapproval and reasons therefore shall be indicated to Lofts in writing.

13. City Duties. City at its own cost and expense shall identify for Lofts the existing public storm and sanitary sewer, and other utility easements on the Option 13 Site property as soon as reasonably possible and terminate without additional consideration any utility easements no longer needed no later than the Closing. If the City requires any existing utility easement(s) to remain and Lofts in good faith concludes that the Project cannot proceed with those utility easement(s) remaining in place, then Lofts shall have the right prior to Closing to terminate this Agreement. If this Agreement is terminated by Lofts, neither party shall be liable to the other party for damages due to termination.

14. Public Improvements. As part of the Project, City, at its expense, will contract, design, and pay for the following Public Improvements in an amount not to exceed the Uses in Attachment F:

a. Acquisition of the Lofts Property for a net exchange at Closing as Provided in this Agreement;

b. Streetscape Improvements as provided in the Approved Plans including general sidewalk improvements and additional streetscape amenities including benches and landscaping, as funding provides.

15. Public Financing. The City proposes to provide financing for all or a portion of the costs of the Public Improvements through the issuance of debt instruments or obligations payable from tax increment revenues available to the City under Neb. Rev. Stat § 18-2147(2), as amended, which are to become available to the City from ad valorem taxes upon real estate located within the Redevelopment Property. Lofts acknowledges that the actual amount of tax increment available will depend upon then prevailing interest rates and the then expected tax levy amounts and valuations, as of the time of issuance. The estimated net proceeds available for expenditure to pay for the cost of the City Improvements is shown on the Fund Uses and Sources on Attachment F.

16. Transfer of Property.

a. Sale and Purchase. At Closing, Lofts shall sell and convey to the City the Lofts Property and the City shall sell and convey to Lofts the Option 13 Site subject to the terms and conditions of this agreement. The net exchange of land for assembling the Option 13 Site will result in a Boot Price payable to Lofts of Three Hundred Ninety-seven thousand nine-hundred twelve dollars (\$397,912) to be allocated and paid in to the Accounts as established in Attachment F in furtherance of the Project at Closing, subject to adjustments and prorations as herein provided.

b. Closing. The closing of the purchase and sale of Option 13 Site shall take place at the offices of the City of Lincoln's Urban Development Department, 129 N. 10th Street, Lincoln, Nebraska, with the property closing to be held on June 12, 2006 at 10:00 a.m. However, Closing shall be automatically extended until the Lincoln City Council has approved the sale as provided by law, or at such other time, date and place as the parties may mutually agree (Closing) not later than July 1, 2006.

c. Use Restrictions, Title and Possession. Lofts agrees to deliver at Closing a warranty deed conveying to the City marketable title to the Lofts Property. City agrees to deliver at Closing a warranty deed conveying to Lofts marketable title to Option 13 Site, subject to the use restrictions and easements for public access and utilities as provided in this Agreement, which shall be included as a deed restriction upon the property for the duration of the tax increment period, which shall be considered the applicable use restrictions under the Nebraska Community Development Law. Lofts agrees to the following use restrictions, which restrictions have been negotiated and considered to constitute the basis for the fair value determined for the Option 13 Site comprising a by prohibiting the following uses on the entire Option 13 Site:

1) Any business whose predominant operation is the retail sale of alcoholic beverages (predominant shall mean retail gross sales of alcoholic beverages, including mixed drinks, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of liquor law violations;

2) Any business whose predominant operation is the retail sale of tobacco products (predominant shall mean retail gross sales of tobacco products, including mixed products, in excess of 50% of gross sales on the premises) or any such business that has an unreasonable pattern of tobacco law violations;

3) Any non motion picture business operated or held out to the public as a sexually oriented business including any business in sexually oriented entertainment or materials such as any: sexually oriented show, exhibition, performance, demonstration, book, or other depictions of a sexually explicit nature; sexually oriented live entertainment or exotic dance; exotic lingerie; sex toys or sexually oriented paraphernalia; sexually oriented telecommunication, internet or similar service; sexually oriented massage parlor; or escort service.

4) Any motion picture business displaying or exhibiting any motion picture that has not been rated by the Classification and Rating Administration (or its successor organization) or any motion picture that has been rated "NC-17" or its equivalent by the Classification and Rating Administration (or its successor organization).

5) Any business whose predominant operation is the use, storage or processing of hazardous or potentially hazardous materials as defined under applicable law, including any service station, salvage or recycling operation, car wash, dry cleaning, vehicle body repair, paint, refinishing, or parts and equipment cleaning business.

6) Any business involving gambling or wagering even if otherwise permitted by law including keno, bingo, slot machines, video lottery machines, casino games, or off-site pari-mutual wagering sites, but excluding the retail sale of lottery tickets as permitted by applicable law.

7) Any business whose predominant operation is warehousing or storage of goods, materials or merchandise (predominant shall mean in excess of 35% of gross square feet used by such business for such purposes).

8) Any business involving the sale or display of weapons, industrial manufacturing, off-site outdoor advertising, cell tower, radio telecommunication or other communication tower, tattoos, illegal activities, or sale of any illegal goods or products.

d. The Use Restrictions provided in this paragraph shall run with the Land and shall be recorded with the Register of Deeds of Lancaster County and shall continue in force and effect until the Final Bond Maturity Date, as hereinafter defined.

e. Title Insurance. On or prior to closing each party shall provide the other and its counsel with a commitment for an owner's policy of title insurance which insures marketable title to the Option 13 Site and Lofts Property respectively, subject only to the easements, restrictions (including those provided in this Agreement as applied to Option 13 Site) and other matters of record. Written notice of any easement, restriction or other matter affecting title to the same that is unacceptable shall be delivered prior to Closing. The curing party shall have a reasonable period, not exceeding thirty (30) days, to cure any unacceptable easement, restriction or other matter affecting title. The premium for the title insurance policy shall be paid by the City

f. Lofts Property. Any special assessment arising out of any improvements completed or under construction prior to Closing of the Lofts Property, whether then levied or unlevied, assessed or unassessed, shall be borne by Lofts up to the date of Closing. At Closing, Lofts shall pay all taxes related to the Lofts Property.

g. Transfer Taxes. City shall pay any and all transfer taxes or similar fees which are payable upon the recording of the instruments of transfer.

17. Representations and Warranties of City. City represents and warrants to Lofts as follows:

a. Power. The City is a municipal corporation duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its property and to enter into this Agreement and perform the obligations hereunder.

b. Sale Approval. Pursuant to law all sales of property owned by the City must be approved by the City Council after an appraisal of the fair market value. The transfer of property is conditioned on the approval of the sale by the City Council as provided by law.

c. Authority Relative to Agreement. This Agreement has been duly executed and delivered by City and constitutes a legal, valid and binding obligation of City, enforceable against City in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

d. Brokers. The City has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of Lofts to pay any finder's fee, brokerage or agent's commission or other like payment in connection with this Agreement or the consummation of the transactions contemplated, and City is not aware of any claim or basis for any claim for same.

e. Floodplain. The Option Site is not located in a designated floodplain.

f. "As Is". The City has sold the Option Site as is, making no representations or warranties concerning it of any kind or nature, except as is expressly set forth in this Agreement.

18. Representations and Warranties of Lofts. Lofts represents and warrants to City as follows:

a. Organization; Power; Good Standing. Lofts is a corporation duly organized and validly existing in good standing under the laws of the State of Nebraska and has all requisite power and authority to own and operate its properties and carry on its business as now being conducted and to enter into this Agreement and perform the obligations hereunder.

b. Authority Relative to Agreement. This Agreement has been duly executed and delivered by Lofts and constitutes a legal, valid and binding obligation of Lofts, enforceable in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, or other laws affecting the enforcement of creditor's rights generally, or by judicial discretion in connection with the application of equitable remedies.

c. Effect of Agreement. The execution, delivery and performance of this Agreement by Lofts have been duly authorized by all necessary action by Lofts and except as provided in

this Agreement will not require the consent, waiver, approval, license or authorization of any person or public authority, and will not violate any provision of law applicable to Lofts, and will not violate any instrument, agreement, order, judgment, decree, statute, regulation, or any other restriction of any kind to which Lofts is a party.

d. Brokers. Lofts has not entered into any contract, arrangement or understanding with any person or firm which may result in the obligation of City to pay any finder's fee, brokerage or agent's commission, or other like payment in connection with this Agreement or the consummation of the transactions contemplated, and Lofts is not aware of any claim or basis for any claim for same.

e. Property Condition. As to the Lofts Property, Lofts represents that it has no knowledge as of the date of this Agreement of any existing environmental condition that would substantially interfere with the implementation of this Agreement. In addition, as of the date of this Agreement, Lofts has no knowledge of any existing conditions related to the presence of Hazardous Materials (as defined by applicable law) on the Lofts Property including any applicable enforcement action, fines, penalties or administrative enforcement proceedings related to Hazardous Materials. The parties agree that if inspection, testing or other activities contemplated by this Agreement identify areas of concern regarding site conditions that would likely interfere, delay or require remediation over and above contingencies for related components (including but not limited to Hazardous Materials) that the party discovering the condition shall immediately notify the other party and the parties shall use their best efforts to resolve the concerns. If the parties cannot agree on a resolution permitting the Project to proceed, this Agreement may be terminated by either party upon ten day's written notice. Neither party shall be liable to the other party for damages due to termination, including consequential damages, anticipated income or lost opportunity related to or arising out of this Agreement.

19. Survey. Neither party has requested a boundaries and improvements survey of the Option 13 Site, and should Lofts desire the same, Lofts shall be responsible at its cost to timely obtain such survey.

20. Inspection and Testing. At any time after the date of this Agreement, the City, Lofts and their respective employees and agents shall have the right to enter upon Option 13 Site and perform such tests and inspections as the City deems necessary for site preparation and Lofts deems necessary to determine suitability of Option 13 Site for its intended use. Unless otherwise approved by the other party in writing, the testing party shall restore Option 13 Site to original condition if tests alter the grade, compaction, or vegetation. As to the Lofts Property, Lofts represents that it has no knowledge as of the date of this Agreement of any existing environmental condition that would substantially interfere with the implementation of this Agreement. In addition, as of the date of this Agreement, Lofts has no knowledge of any existing conditions related to the presence of Hazardous Materials (as defined by applicable law) on the Lofts Property including any applicable enforcement action, fines, penalties or administrative enforcement proceedings related to Hazardous Materials. The parties agree that if inspection, testing or other activities contemplated by this Agreement identify areas of concern



regarding site conditions that would likely interfere, delay or require remediation over and above contingencies for related components (including but not limited to Hazardous Materials) that the party discovering the condition shall immediately notify the other party and the parties shall use their best efforts to resolve the concerns. If the parties cannot agree on a resolution permitting the Project to proceed prior to Closing, this Agreement may be terminated by either party upon ten day's written notice. Neither party shall be liable to the other party for damages due to termination, including consequential damages, anticipated income or lost opportunity related to or arising out of this Agreement. Both parties agree to provide a complete copy of any environmental site assessments or similar reports related to the Lofts Property or Option 13 Site as soon as the report is completed and delivered to the City.

21. Valuation of Property Within the Project Area. The City intends to use the ad valorem tax provisions set forth in Neb. Rev. Stat. § 18-2147 et seq. in accordance with the Redevelopment Plan. The tax increment is to be derived from the increased valuation, determined in the manner provided for in Article 8, Section 12 of the Constitution of the State of Nebraska and in Neb. Rev. Stat. §§ 18-2147 to 18-2150 (as amended). The tax increment revenues which are to be used to pay debt service for the Project will be derived from the increased valuation from redeveloping Option 13 Site as provided in this Agreement. So long as any of the debt issued with respect to the Project funds remain outstanding and unpaid, Lofts agrees not to contest any taxable valuation assessed for Option 13 Site which does not cumulatively exceed \$3,218,000; provided that the construction of Option 13 Site is completed as provided in this Agreement. In addition, subsequent owners of dwelling units within the Project shall be subject to an allocated not to protest number approved in accordance with paragraph 27 below.

22. Restriction on Transfer. Lofts will not, for a period of fifteen (15) years after the effective date of the ad valorem tax provision, or so long as the tax increment indebtedness remains outstanding whichever period of time is shorter (Tax Increment Period), convey the Option 13 Site (or any unit or portion thereof) to any entity which would result in such interest being exempt from ad valorem taxes levied by the State of Nebraska or any of its subdivisions. Lofts agrees to adopt restrictive covenants upon all units or any saleable portion within the Option 13 Site which prohibit leasing or sale of the same to non-owner occupants and prohibiting any owner from applying for any exemption from ad valorem taxes so long as the tax increment indebtedness remains outstanding. Lofts agrees to adopt restrictive covenants upon all the individual dwelling units which prohibit leasing of any dwelling to non-owner occupants and prohibiting any owner from applying for any exemption from ad valorem taxes for the duration of the Tax Increment Period. The restriction on transfer shall not apply to financing permitted under this Agreement. Upon the sale of condominium units under an approved condominium or similar regime, Lofts shall obtain prior approval of the same from the Mayor and such condominium regime shall be deemed approved upon written approval from the Mayor for conformance with the Redevelopment Plan and this Agreement including the same use restrictions and necessary covenants respecting the Agreement to Pay Taxes as provided in this Agreement, which approval shall not be unreasonably withheld.

23. Agreement to Pay Taxes; Escrow Amount. Lofts agrees to pay all real property taxes levied upon Option 13 Site prior to the time the taxes become delinquent. This contractual obligation to pay such taxes prior to delinquency shall cease upon expiration of the tax increment period, but the City in no way waives the statutory obligation to continue to pay real estate taxes. This provision shall not be deemed a waiver of the right to protest or contest the valuation of the lots or improvements for tax purposes. Lofts agrees, at Closing to deposit good funds with the City Treasurer (Escrow Amount) in the amount of 17% of the total TIF (as provided in the Uses and Sources Exhibit F). The Escrow Amount shall be held in trust by the City Treasurer, in a separate interest bearing account, until September 10, 2008 and then paid out (including interest) only as follows: To Lofts if Lofts has obtained substantial completion as certified by the Mayor of construction of all 13 of the dwellings, including both exterior and interior finish, within 24 months following the Closing of the purchase and sale of Option 13 Site; Provided, however, that upon such substantial completion, the taxable valuation assessed for Option 13 Site is not less than \$3,218,000. As used herein, substantial completion does not require that the dwellings be sold. Otherwise such funds shall be paid out to the City as follows: in such amounts to satisfy any insufficiency in the required debt payment/s including both principal and interest according to the schedule approved for the related instruments and securities and for so long funds remain and such insufficiency shall persist, whether one or more years. In the event any funds remain at the end of the Tax Increment Period, the same shall be returned to the City for disposition as provided by law.

24. Financing Creating Encumbrances Restricted.

a. Prior to completion of Option 13 Site, as certified by the Mayor, neither Lofts nor any successors in interest to Option 13 Site as redeveloper shall engage in any financing or any other transaction creating any Mortgage upon the Real Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to any of such Option 13 Site, except for the purposes of obtaining funds only to the extent necessary to design, construct, maintain, repair, replace and insure the redevelopment Project. Lofts or any successor in interest as redeveloper shall notify the City in advance of any financing secured by Mortgage that it proposes to enter into with respect to Option 13 Site, and shall promptly notify the City of any Mortgage that has been created on or attached to Option 13 Site whether by voluntary act of Lofts or otherwise. Notwithstanding the above, if any involuntary encumbrance or lien is made on or attached to any of Option 13 Site and which is contested by Lofts, then Lofts may defend against such encumbrance or lien, provided that a sufficient bond or security is posted with the City and Lofts's lender to permit Lofts to avoid or prevent foreclosure of such encumbrance or lien. In addition, Lofts agrees that prior to completion of Option 13 Site, as certified by the Mayor, any loan proceeds secured by any interest in Option 13 Site shall be used solely for the payment of costs and expenses related to the development of the Project based on percentage of completion. Lofts shall provide a copy of all draw requests and bank approvals related to the Project to the Director of Urban Development in a timely fashion.

b. In the event that any foreclosure of any Mortgage, deed of trust or other encumbrance should occur prior to the furnishing of the Certificate of Completion or at any time

when any casualty damage to the Property has occurred and has not been fully restored, any party who obtains title to any portion of Option 13 Site from or through Lofts or the holder of any Mortgage or any other purchase at foreclosure sale shall be obligated to commence construction or reconstruction within three (3) months from the date of acquisition of title by said party and to complete construction or restoration within twenty-four (24) months from the date of such acquisition.

c. Notice of Default. Whenever the City shall deliver any notice or demand to Lofts with respect to any breach or default by Lofts of its obligations or covenants in this Agreement, the City shall at the same time forward a copy of such notice or demand to each Holder of any Mortgage at the last address of such Holder as shown in the records of the Register of Deeds of Lancaster County.

d. Option to Cure. If thirty (30) days after any notice or demand with respect to any breach or default, such breach or default remains uncured, each such Holder shall (and every Mortgage or other instrument of encumbrance made prior to completion of Option 13 Site by Lofts or its successors in interest shall so provide) have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage debt and the lien of its Mortgage; provided, that if the breach or default is with respect to construction of Option 13 Site, nothing contained in this subparagraph or any other part of this Agreement shall be deemed to permit or authorize.

e. Rights Applicable to Other Forms of Encumbrance (Deed of Trust). The rights and obligations of this Agreement relating to Mortgages of any portion of Option 13 Site shall apply to any other type of encumbrance on any of Option 13 Site, and any of the stated rights, obligations and remedies of any party relating to mortgage foreclosures shall be applicable to procedures under any deed of trust or similar method of encumbrance.

25. Damage or Destruction of Redeveloper's Property. During the construction period, Lofts agrees to keep the construction area, including completed operations insured against loss or damage by fire, and such other risks, casualties, and hazards as are customarily covered by builders' risk or extended coverage policies in an amount not less than the replacement value but allowing for reasonable coinsurance clauses and deductibles. In the event of any insured damage or destruction, Lofts agrees to restore the Project to its prior condition within twelve (12) months from the date of the damage or destruction, and shall diligently pursue the same to completion. In the event Lofts fails to restore the same for any reason, Lofts shall pay to the city the amount of tax increment received by the City in the preceding year times the number of years remaining in the tax increment period. During the tax increment period, Lofts shall include by restrictive covenant an enforceable obligation on the owner or tenant in possession to maintain property insurance on an extended coverage all-risk basis in an amount not less than the replacement value, allowing for reasonable coinsurance clauses and deductibles and also subject to the owner or tenant's obligation to restore the Project to its prior condition within twelve (12) months from the date of the damage or destruction, diligently pursuing the same to completion.

26. Condemnation. If during the tax increment period all or any portion of Option 13 Site is condemned by a condemning authority other than the City, and the condemning authority or its successor in interest would not be obligated to pay real estate taxes upon that portion condemned, the City shall be entitled to claim against the Condemnor an interest in the property equal to the present value of the pro rata share of tax increment indebtedness outstanding as of the date of taking.

27. Remedies. Except as otherwise provided in this Agreement, in the event of any default in performance of this Agreement by the City or Lofts, the party in default shall, upon written notice from the other, proceed immediately to cure or remedy such default within thirty (30) days after receipt of notice. However, if the default cannot, in the exercise of reasonable diligence, be cured within thirty (30) days, then the defaulting party shall commence efforts to cure and shall diligently continue to cure the default. In the default is not cured, the non-defaulting party may institute any proceedings which may be necessary to cure and remedy the default.

28. Waiver. The parties shall have the right to institute actions or proceedings as they may deem necessary to enforce this Agreement. Any delay in instituting any action or otherwise asserting rights under this Agreement shall not operate as a waiver of rights or limit rights in any way.

29. Delay in Performance For Causes Beyond Control of Party. The parties or their successors or assigns shall not be in default of their obligations for delay in performance due to causes beyond their reasonable control and without their fault, including acts of God, acts of the public enemy, acts of the federal or state government or subdivisions thereof, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of contractors, or subcontractors due to such causes. The purpose and intent of this paragraph is that in the event of the occurrence of any such delay, the time for performance of the obligations of either party with respect to construction of improvements shall be extended for the period of delay. However, in order to obtain the benefit of the provisions of this paragraph, the party seeking the benefit shall within twenty (20) days after the beginning of the delay of performance notify the other party in writing of the cause and the reasonably expected length of delay.

30. Rights and Remedies Cumulative. The rights and remedies of the parties to this Agreement shall be cumulative and the exercise by either party of any one or more remedies shall not preclude the exercise by it of any other remedies for any other default or breach by the other party. A waiver of any right of either party conferred by this Agreement shall be effective only if in writing and only to the extent specified in writing.

31. Conflicts of Interest: City Representatives Not Individually Liable. No officer or employee of the City shall have any personal interest, direct or indirect, in this Agreement. No official or employee of the City shall be personally liable to Lofts or any successors in interest due to any default or breach by the City under the terms of this Agreement.

32. Approvals. For purposes of this Agreement and the approvals and disapprovals required, Lofts shall be entitled to rely on the written approval or disapproval of the City Council, the Mayor, or the Director of the Department of Urban Development or its successor as constituting the approval or disapproval required by any one or more of them. City shall be entitled to rely on the written approval of the President of Lofts as constituting the approval or disapproval of Lofts.

33. Notices and Demands. A notice under this Agreement by either party to the other shall be deemed delivered on the date it is postmarked, sent by registered or certified mail, postage prepaid, or delivered personally to R STREET LOFTS LLC, 1941 K STREET, LINCOLN NE 68510, or the City, to the Office of Mayor, 555 South 10th Street, Lincoln, Nebraska 68508 with a copy to the City Attorney's office, 575 S. 10th St., Lincoln, Nebraska 68508, or at such other address with respect to either party as that party may from time to time designate in writing and notify the other as provided in this Paragraph.

34. Access to Project Area. During construction of the Project, Lofts shall permit the representatives of the City to enter all areas of Option 13 Site and at any and all reasonable times, as the City may deem necessary for the purposes of inspection of work being performed in connection with the construction of the facility.

35. Provisions Run With the Land. This Agreement shall run with Option 13 Site and shall inure to and bind the parties and their successors in interest.

36. Headings. Headings of the paragraphs of this Agreement are inserted for convenience only and shall be disregarded in interpreting any of its provisions.

37. Severance and Governing Law. Invalidity of any provision of this Agreement by judgment or court order shall not affect any other provisions which shall remain in full force and effect. This Agreement shall be construed and governed by the laws of Nebraska.

38. Expiration of Agreement. This Agreement shall expire upon expiration of the Tax Increment Period, or retirement of the tax increment indebtedness, whichever first occurs.

Executed by City this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

ATTEST:

CITY OF LINCOLN, NEBRASKA,  
a Municipal Corporation

\_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
Coleen J. Seng, Mayor

Executed by R Street Lofts LLC, this 10 day of May, 2006.

R STREET LOFTS LLC  
a Nebraska Limited Liability Company

By: Fernando Paces, Member

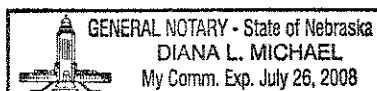
STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF LANCASTER            )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2006, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, on behalf of the City.

\_\_\_\_\_  
Notary Public

STATE OF NEBRASKA                    )  
  ) ss.  
COUNTY OF LANCASTER            )

The foregoing instrument was acknowledged before me this 10 day of May, 2006, by Fernando Paces Member of R Street Lofts, LLC., a Nebraska Limited Liability Company on behalf of the Company.



Diana L. Michael  
Notary Public

Attachment A

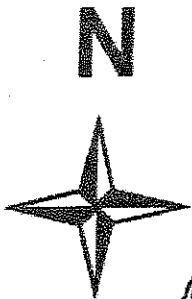
Property Diagram and Legal Description

Lofts Property - ORIGINAL PLAT BLOCK 31 LOTS 3 & 4 & E8' VAC ALLEY ADJ.

## Attachment B

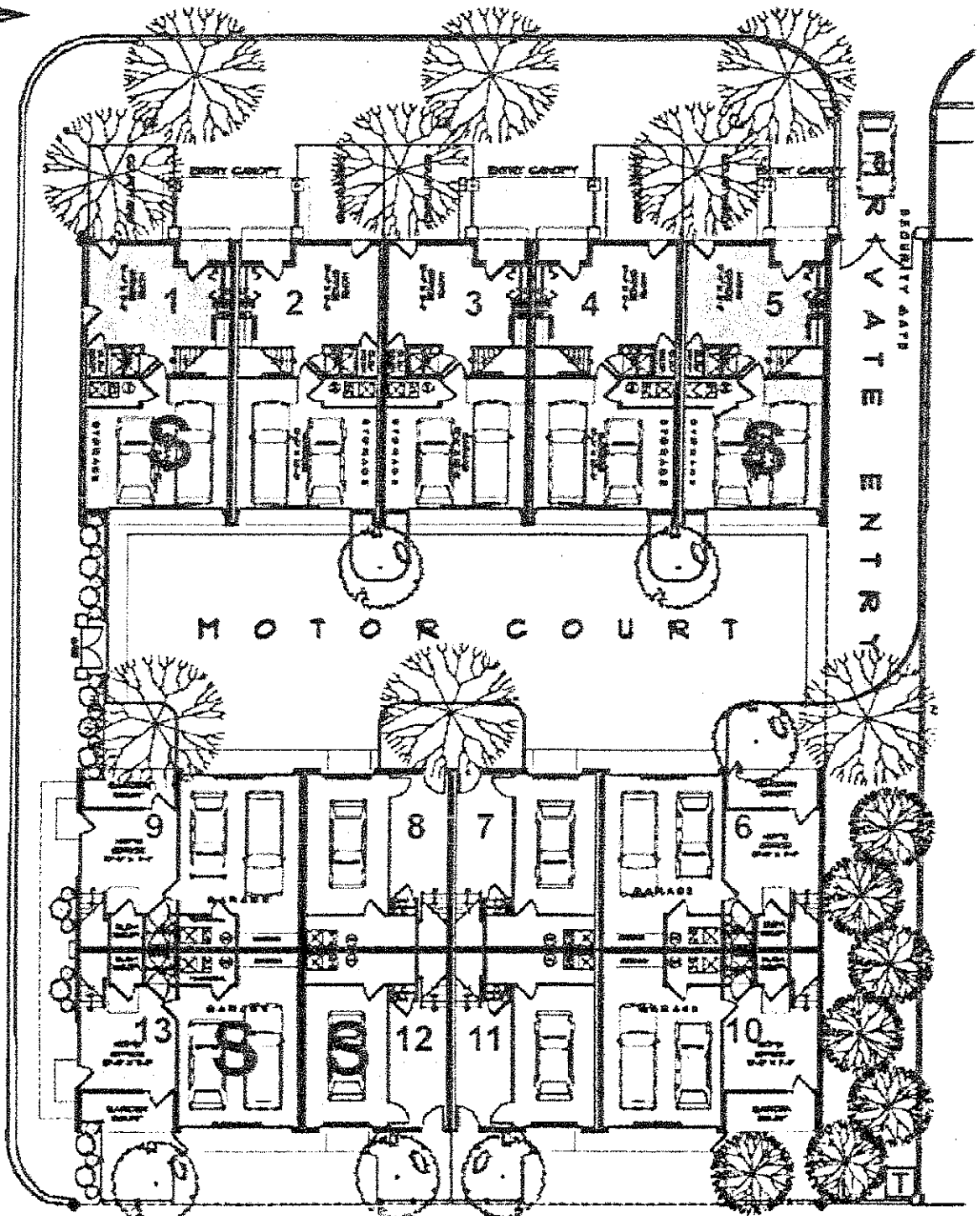
### Schematic Drawings





N STREET

TH STREET



Attachment C



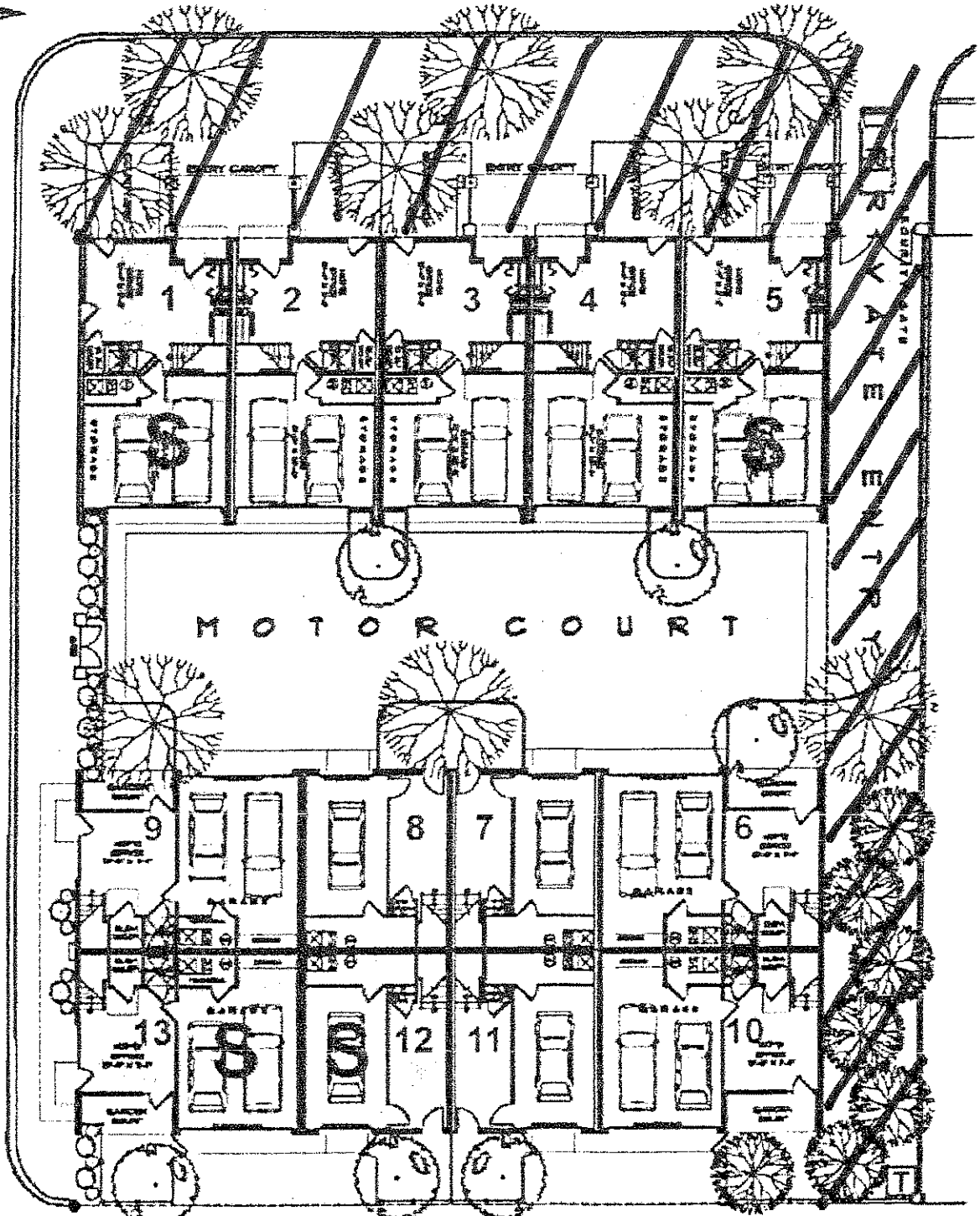
POTENTIAL  
EASEMENT  
AREAS

N



R STREET

TH STREET



Attachment D

Reserved

Attachment E

Reserved

Attachment F

Option 13

TIF / Sources and Uses Estimates

Current Assessed Value	\$186,000
New Assessed Value	\$3,404,000
Increment Value	\$3,218,000
Annual TIF Generated (Increment x .02075053) (2005 Tax Rate)	\$66,775
Coverage Rate (Annual TIF Generated/1.25)	\$53,420
Coverage Rate x 13 years @ 6%	\$472,912
Funds Available for Construction	\$472,912

This total TIF generation estimate assumes that we are able to fund this project using the small TIF ordinance.

Sources

TIF	\$472,912
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Uses:

Streetscape*	\$ 75,000
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Escrow (17%)	\$ 67,650
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Logistical Improvement account	\$ 330,262
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\* Note - The streetscape account will be used to fund general streetscape improvements and will include additional amenities including benches and landscaping, as funding allows.